

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

MEMORANDUM & ORDER

-against-

05-CR-060 (NGG)

VINCENT BASCIANO,

Defendant.

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NICHOLAS G. GARAUFIS, United States District Judge.

On Tuesday, June 7, 2011, members of the news media filed a motion to unseal the transcripts of ex parte conferences the court held with Defendant during his capital murder in aid of racketeering trial. (Docket Entry # 1279.) That same day, the court filed a text order on ECF directing Defendant to file a response if “Defendant requests that specific portions of the transcripts remain under seal,” citing “authority supporting such a request and case-specific reasons why such a measure is justified.”

On Friday, June 10, 2011, Defendant filed a response, requesting that transcripts of *all* ex parte meetings remain under seal. (Docket Entry # 1288.) Defendant failed to state any case-specific reasons why the transcripts should remain under seal now that trial has concluded, and admitted that no case law could be found directly supporting such a request. (*Id.* at 2.) Rather Defendant argues generally that the transcripts should remain under seal because “any statements made by Basciano and/or counsel during the ex parte proceedings may prejudice Basciano. In particular, counsel is concerned that those statements would be made available to the Government prior to Basciano’s post-trial motions are filed and his appeal filed in the Court of Appeals.” (Docket Entry # 1288 at 1.) Defendant asserts that the “ex parte meetings with the Court involved discussion of the defense investigation and defense strategy concerning the case.

Of particular concern, is that some of the witnesses interviewed by the defense and discussed with the Court have serious security concerns because, they were formerly part of the witness security program.” (Id. at 1-2.) Defendant provides no explanation, however, and the court can find none, for why revealing defense trial strategy after the conclusion of trial where Defendant was found guilty of all counts would improperly prejudice the Defendant. Moreover, the court does not believe that any security concerns exist requiring that the documents remain under seal.

Defendant requested the opportunity on multiple occasions to address the court ex parte and under seal because he disagreed with defense counsel’s strategic decisions and apparently wanted to create a record of any ineffective assistance of counsel for appeal. Defendant also sought to advise the court of these disagreements in the event that the court would deem it appropriate to intervene. The court permitted such meetings to be held ex parte and under seal so as to protect the Defendant from revealing defense strategy and prejudicing his defense during trial. Trial is now over, and the court sees no reason why the unsealing of the transcripts of the ex parte conferences with Defendant would unduly prejudice the Defendant’s post-trial motions and appeals. Furthermore, it was the court’s understanding that Defendant requested these ex parte conferences to augment the record for appeal. Defendant cannot have it both ways—arguing that the transcripts should remain under seal through appeal unless they are useful to his appeal.

Consequently, the court orders that the transcripts of the ex parte conferences conducted with the Defendant during trial shall be unsealed. If Defendant believes that any specific portions of the transcripts raise “serious security concerns,” he should make a motion identifying these portions and providing legal justification for their remaining under seal by midnight, June 16, 2011. The court reporters are directed to file these sealed portions of the transcripts on the

public docket no sooner than Wednesday, June 22, 2011, so that the court may have the opportunity to timely review any submission made by Defendant.

SO ORDERED.

Dated: Brooklyn, New York
June 10, 2011

/s/ Nicholas G. Garaufis
NICHOLAS G. GARAUFIS
United States District Judge